

PART 1 FOREIGN INFLUENCE

Chapter 1: Overview and Legal Analysis

FINDINGS

- (1) Large contributors to both the Republican and Democratic parties used funds from foreign sources to gain access to top U.S. Government officials.**
- (2) Foreign money comprised only a small fraction of the total contributions made during the 1996 election cycle, and the evidence before the Committee suggests that, with the exception of Republican National Committee Chairman Haley Barbour and Representative Jay Kim, neither party's leaders or candidates intentionally solicited or accepted foreign donations. Nor did the evidence before the Committee suggest that foreign donations altered U.S. policy or damaged American national security.**
- (3) Although detection of foreign-sourced donations is difficult, closer supervision of party fundraisers and a more careful and complete review of large contributions may have prevented some of these contributions from being accepted.**

OVERVIEW OF FOLLOWING CHAPTERS

A primary objective of the Committee's campaign finance hearings was to determine what role foreign money played in the 1996 elections and what impact, if any, it had on American foreign policy. Media reports were rife with allegations that foreign money had infiltrated American political campaigns to win special consideration of private commercial ventures or policy concerns. Such allegations, if true, threaten the integrity of our electoral system, foreign policy, and national security.

The Committee vigorously pursued these allegations. As the following chapters demonstrate, the investigation substantiated a host of disturbing facts involving both parties, including a \$2 million loan transaction involving a foreign national and foreign funds resulting in the Republican Party benefiting from \$800,000 in foreign funds; large contributions to the Democratic Party solicited by John Huang and Charlie Trie in which foreign dollars were used and/or the identity of the true contributor was hidden; large contributions to both parties from apparently insolvent individuals such as Yogesh Gandhi and Michael Kojima; repeated appearances at White House events and Democratic National Committee ("DNC") fundraisers by foreign nationals attending as guests of DNC contributors; even an organized effort to solicit contributions from foreign nationals in South Korea, resulting in the criminal convictions associated with the election campaigns of Representative Jay Kim of California. In most cases, the Committee uncovered no evidence that a recipient candidate or political party intentionally solicited a contribution funded with foreign money. However, in the cases involving the \$800,000

and convictions related to the Kim campaigns, the Committee did obtain evidence that foreign money had been deliberately targeted as a funding source.

Some of the transactions described in this and other parts of the Minority Report, such as the conduit contributions obtained by Trie, the Cheong Am contribution, and the solicitation of foreign nationals in the Kim matter, involve foreign money in apparent violation of federal law. Other transactions initially portrayed as involving foreign money, such as contributions from persons associated with the Hsi Lai Temple, turned out not to involve foreign money, but the apparent improper use of domestic funds. Many of the transactions demonstrate that, during the 1996 election cycle, the DNC had deficient procedures for supervising fundraisers and detecting foreign contributions and exercised inadequate oversight, including instances in which DNC senior officials who observed questionable fundraising practices or contributions failed to take the action needed to prevent problems or wrongdoing. Still other transactions expose existing vulnerabilities in federal election law, which, although intended to prohibit foreign money in U.S. elections, is not always as clear or as strong as required.

One critical question examined by the Committee was whether either party made a systematic attempt to solicit foreign funds for use in campaigns. After a year-long investigation, the Committee found no documentary or testimonial evidence indicating a deliberate plan by the DNC to pursue foreign funds.¹ The Committee did obtain documentary and testimonial evidence that the RNC established and funded a tax-exempt organization called the National Policy Forum (“NPF”), helped it solicit foreign funds, and then used a portion of those funds to advance Republican electoral activities in the 1994 and 1996 election cycles. In Senator Glenn’s words, NPF presents the only known case “where the head of a national political party knowingly and successfully solicited foreign money, infused it into the election process, and intentionally tried to cover it up.”²

A second important issue addressed by the Committee’s investigation involved allegations that the Chinese government had devised a plan to, in Chairman Thompson’s words, “pour illegal money into American political campaigns” and which affected the 1996 congressional and presidential elections.³ In the end, the evidence before the Committee demonstrated that Chinese government officials had proposed a plan during the last election cycle designed to promote China’s interests with members of Congress and state legislators, not with presidential candidates. There was not sufficient evidence to support the conclusion that any Chinese government funds actually made their way into the 1996 federal elections, congressional or presidential, and there was no evidence that any steps that may have been taken by the Chinese government affected the 1996 presidential race.

The evidence before the Committee indicates that foreign money, as a whole, provided a small fraction of the contributions involved in the 1996 elections. During the 1996 election cycle, the Democratic Party received over three million contributions totalling about \$346 million and returned fewer than 200 individual contributions totalling about \$3 million, of which an even smaller fraction involved foreign money.⁴ The Republican Party received about \$555 million in

contributions and has returned about \$137,000 in foreign contributions, and there is another \$1 million that should also be returned, as this Report will explain.⁵ The evidence before the Committee also shows that, while contributors did win access to senior decisionmakers, none obtained a change in U.S. domestic or foreign policy.

Although foreign contributions did compromise a small portion of campaign contributions during the 1996 election cycle and U.S. policy was not altered, the seriousness of the problem is established by the many disturbing facts that were uncovered or substantiated during the investigation with respect to both parties. As the chapters on John Huang and Charlie Trie demonstrate, deficient DNC oversight in monitoring fundraising activities and detecting foreign contributions allowed a number of contributions derived from foreign sources to enter the campaign finance system. The chapters on Ted Sioeng and Michael Kojima demonstrate that similar oversight deficiencies affected the Republican Party.⁶ The chapters on NPF and Representative Kim document two instances in which foreign funds were deliberately pursued. Together, these chapters demonstrate that both parties failed to adequately investigate large contributions for possible illegal involvement of foreign nationals or possible use of foreign funds; that both parties failed adequately to search out and stop the pursuit of illegal foreign contributions; and that both parties wooed large contributors by providing access to the White House, presidents, vice presidents, and other senior government officials. The Kojima chapter demonstrates that these tactics and the resulting stain on the federal campaign finance system are not new.

LEGAL ANALYSIS

The federal law barring foreign contributions in U.S. elections is set forth in section 441e of Title 2 of the U.S. Code. Section 441e is intended to prohibit foreign money from playing any role in U.S. elections, but the statutory language is not as clear or as strong as needed and should be strengthened. Weaknesses in the existing legal prohibition may hinder the criminal prosecutions and civil enforcement actions needed to keep foreign money from influencing U.S. elections.

Section 441e(a) states:

It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contributions, in connection with an election to any political office . . . or for any person to solicit, accept, or receive any such contribution from a foreign national.⁷

“Foreign national” is defined in section 441e(b) to include: (1) a foreign government or foreign political party; (2) an individual who is not a U.S. citizen or legal permanent resident; or (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Section 441e's foreign money ban contains a number of ambiguities which have been partially resolved by the Federal Election Commission ("FEC") and Department of Justice. For example, the key FEC regulation, 11 C.F.R. 110.4, states that section 441e's foreign money ban applies not only to contributions by foreign nationals, but also to campaign expenditures by foreign nationals.⁸ In addition, the regulation states that the statutory ban extends not only to federal elections, but also to state and local elections.⁹ A third ambiguity is the statutory language applying the foreign money ban to contributions made "in connection with an election," which has led to questions of whether the statute permits soft money contributions by foreign nationals to parties or others for non-election-related activities, such as payments for office building construction or issue ads.¹⁰ Clear legal prohibitions on foreign nationals in these three areas -- campaign expenditures, state and local elections, and soft money contributions -- are vital to keeping foreign money from influencing U.S. elections. While most are addressed administratively, section 441e's foreign money prohibition would clearly benefit from improved statutory language.

A fourth set of issues involves foreign corporations which establish subsidiaries in the United States. The statute is silent on how these corporate entities are to be treated. The FEC has determined that they may make campaign contributions under certain circumstances. The key FEC regulation states that a "foreign national shall not direct, dictate, control, or directly or indirectly participate in the decisionmaking process" of a U.S. corporation with regard to "election-related activities, such as decisions concerning the making of contributions or expenditures" or the administration of a PAC.¹¹ A 1982 FEC advisory opinion holds that a U.S. subsidiary of a foreign corporation may lawfully make campaign contributions in state and local elections, provided that the subsidiary is organized under the laws of a state in the United States, its principal place of business is in the United States, and no foreign national controls or participates in the contribution decision.¹² One FEC Commissioner strongly dissented, stating:

The plain language of Section 441e explicitly prohibits "a foreign national directly or through any other person to make any contribution . . ." in connection with an election. [The US subsidiary] is a "person" under the definition in the Statute. . . . The fact that the foreign national's assets go through a USA subsidiary does not make a difference. . . . The facts of this case are conclusive that the ultimate source of the contribution will be [the foreign national]. [The foreign national] owns [the U.S. subsidiary]. They bought it. They paid for it. It's theirs. But it cannot contribute its money to our elections.

Despite this and other dissenting opinions taking the same position,¹³ the FEC continues to permit U.S. subsidiaries of foreign corporations to make soft money contributions if the subsidiary operates under U.S. laws, in the United States, and without the participation of a foreign national in its contribution decisions.

In addition, a 1992 FEC advisory opinion states that a U.S. subsidiary of a foreign parent must be able to "demonstrate through a reasonable accounting method that it has sufficient funds in its account, other than funds given or loaned by its foreign national parent," to pay for its

campaign contributions.¹⁴ The opinion states that a foreign parent corporation “cannot replenish all or any portion of the subsidiary’s political contributions.” The opinion cites approvingly an earlier advisory opinion prohibiting campaign contributions by a subsidiary “predominantly funded by a foreign national parent, and whose projects were not yet generating income.”¹⁵ These rulings attempt to ensure that a U.S. subsidiary of a foreign corporation pays for its campaign contributions with domestic and not foreign money.

These FEC rulings do not, however, resolve a key legal issue for U.S. subsidiaries -- the type of accounting demonstration required. During the Committee’s hearings, a question was raised as to whether the 1992 FEC advisory opinion requires U.S. subsidiaries to demonstrate that their contributions are made from domestic profits or net earnings, in order for these contributions to satisfy FEC regulatory requirements.¹⁶ The opinion’s actual language is less explicit, however, requiring only a demonstration “through a reasonable accounting method” that “sufficient funds” are in the subsidiary’s account to pay for the contribution, not counting “funds given or loaned by its foreign national parent.” This language could be interpreted to require the subsidiary to demonstrate only that, at the time of the contribution, it had sufficient domestic funds in its account to pay the contributed amount, without reference to its ultimate net earnings or profits during a particular period of time. Since both interpretations of the 1992 advisory opinion are reasonable, clarifying legislation or additional regulations are needed to ensure that subsidiaries are fully informed of their legal obligations with respect to such contributions.

The following chapters demonstrate how compliance with section 441e’s foreign money ban can be difficult, even for campaign organizations acting in good faith. With respect to contributors who are individuals, one key difficulty is ascertaining a person’s legal status as a U.S. citizen or legal permanent resident. Neither candidates nor political parties have ready access to personal immigration and citizenship data.¹⁷ It also can be difficult to determine whether a U.S. citizen or legal resident who receives money from abroad, either from a business or relative, is properly using his or her own money to make a contribution or is instead making an illegal contribution in the name of another.¹⁸ With respect to corporations, it can be difficult for a campaign organization to determine whether a foreign national is participating, directly or indirectly, in a corporation’s contribution decisions. It is also difficult to determine whether a corporation has sufficient domestic funds to pay for its contributions, or whether a foreign parent is planning to replenish a subsidiary’s campaign contributions.¹⁹ These practical enforcement problems²⁰ are in addition to statutory ambiguities that should be resolved through legislation clarifying and strengthening section 441e’s foreign money ban.²¹

1. DNC finance chair Richard Sullivan testified that no DNC plan for pursuing foreign money ever existed:

Sen. Glenn. I would like to know if at the DNC when you were there, there was ever any guideline put out to go for foreign money, and let me clarify. I do not mean money raised from American citizens of foreign extraction. I do not mean foreign money that is legal from green card holders in this country or things like that. I am talking about going after foreign money from abroad and bringing it back into our political system. Was there ever any such guideline with regard to foreign money by that definition that you had at the DNC?

Sullivan. No.

Sen. Glenn. Did Mr. Fowler [Chairman of the DNC] ever discuss the possibility of going into that area and trying to raise money from abroad, foreign money as I defined it?

Sullivan. No.

Sen. Glenn. Was there ever any discussion pro or con about whether you would even consider something like that?

Sullivan. No.

Sen. Glenn. Was there ever any communication or even a hint from the President or the Vice President that we should include foreign money?

Sullivan. No. . . .

Sen. Torricelli. [W]as there ever any discussion of duplicating the Republican National Committee's efforts with the National Policy Forum by using a tax-free vehicle, which became a conduit for foreign money?

Sullivan. No.

Richard Sullivan, 7/9/97 Hrg., pp. 30-31, 116;

DNC Chairman Fowler testified:

During the 1995-96 electoral cycle, we at the Democratic National Committee made mistakes. . . . Those mistakes, however, were mistakes of process, not intent. If any member of our staff or anyone associated with our fundraising efforts did things that were illegal or unethical, they did so in violation of our policies. Our vetting was deficient, but our purpose and values were good and proper. To the best of my knowledge, there was no intent by DNC officials to accept money from illegal foreign sources. . . . If there was

a plot or conspiracy to pump money illegally into the Democratic National Committee coffers, no one told me about it. And to my knowledge, it did not happen.

Donald Fowler, 9/9/77 Hrg., pp. 4-5.

2. Senator Glenn, 7/8/97 Hrg., p. 22. See Chapter 3 on the National Policy Forum. The evidence before the Committee includes a resignation memorandum by NPF President, Michael Baroody, which cites Chairman Haley Barbour's inappropriate "fascination" with soliciting foreign money for NPF; an NPF document listing "foreign" contributions as a fundraising option; and testimony and documents describing the successful solicitation of several foreign contributions. In the most significant transaction, documents and testimony chronicle how NPF, with the assistance of Barbour and the RNC, obtained a \$2 million loan in October 1994, collateralized with \$2 million in certificates of deposit paid for with funds transferred from Hong Kong dollars at the direction of a foreign national, Ambrous Young; how \$1.6 million of the loan proceeds were immediately transferred to the RNC and used in its 1994 election efforts; how Barbour met with Young on a yacht in Hong Kong in 1995 to ask him to forgive repayment of the loan; how NPF unilaterally stopped repayment five months before the 1996 elections, thereby halting a cash drain on the RNC which had been supplying the repayment funds; and how, after the election, NPF settled the loan with RNC funds wired to Hong Kong under an arrangement that allowed non-repayment of approximately \$800,000.

3. Chairman Thompson, 7/8/97 Hrg., pp. 2, 4.

4. See FEC filings for Democratic National Committee, Democratic Senatorial Campaign Committee, and Democratic Congressional Campaign Committee; Exhibit 62: DNC In-Depth Contribution Review, DNC 0134-45.

5. See FEC filings for Republican National Committee, National Republican Senatorial Committee, and National Republican Congressional Committee. To date, the Republican Party has returned a \$15,000 foreign contribution made in 1995 by Methanex Management, Inc., a U.S. subsidiary of a Canadian corporation; and about \$122,000 in foreign contributions made from 1991 through 1994 by Young Brothers Development (USA). See, for example, Roll Call, 10/21/96 (Methanex contribution); New York Times, 5/9/97 (Young Brothers contributions). The NPF has apparently returned a \$50,000 foreign contribution made in 1996 by Panda Industries, Inc., a company owned by a foreign national, Ted Sioeng. See Newsday, 9/14/97.

The Republican Party has not returned \$800,000 retained in 1996 from NPF's default on a loan transaction involving a foreign national and foreign dollars from Hong Kong; \$25,000 from a 1996 contribution by a foreign organization, the Pacific Cultural Foundation, which is based in Taiwan; or \$215,000 remaining from a 1992 contribution by Michael Kojima that apparently utilized foreign funds from Japan. Each of these matters is discussed in the following chapters.

6. See also Part 3, chapters 21 and 22 on contributions in the name of another affecting both parties in 1996.

7. 2 U.S.C. 441e.

8. 11 C.F.R. 110.4(a)(1). The need to ban campaign expenditures as well as contributions by foreign nationals is illustrated, for example, in an incident involving the Embassy of India in Washington, which, in 1996, sent an unknown number of mailings to Indian-American voters in New Jersey discussing one of the candidates running for the U.S. Senate. The 1/30/96 letter, which was addressed to “Friend” from Ambassador Shyamala Cowsik, Deputy Chief of Mission at the Embassy, states: “As you know, Congressman Robert Torricelli (D-NJ) is . . . currently running for the New Jersey seat being vacated by Senator Bill Bradley. You also know that Congressman Torricelli has consistently been a strong critic of India. He was, in 1995, the original co-sponsor, along with Congressman Dan Burton, of the amendment (H.R. 1425) to suspend development assistance to India.” See also The Ethnic NewsWatch, 11/15/96.

9. 11 C.F.R. 110.4(a)(1). Section 441e bars a foreign national from making a “contribution” in connection with “an election.” “Contribution” is defined in section 431(8)(A) of the law in terms of an election “for Federal office.” This limiting language in the definition of contribution may create an ambiguity as to whether the foreign money ban extended to Federal, state and local elections, which is resolved in the regulation.

10. See, for example, Legal Times, 1/6/97. FEC Advisory Opinion 1984-41 determined that it was acceptable for a foreign national to contribute \$500,000 to a U.S. charitable organization to broadcast issue ads criticizing the “liberal bias” of the media. These ads did not mention candidates, political parties, or elections. The FEC deadlocked on three other proposed ads that did mention candidates, parties or elections, and so provided no guidance on whether foreign money may be used for those issue ads.

11. 11 C.F.R. 110.4(a)(3).

12. FEC Advisory Opinion 1982-10.

13. See, for example, dissenting opinion in FEC Advisory Opinion 1992-16.

14. FEC Advisory Opinion 1992-16.

15. FEC Advisory Opinion 1989-20.

16. See Committee hearing on 7/15/97.

17. No federal database exists with citizenship information for persons born in the United States; campaign organizations have to obtain such information from the birth records maintained by individual states and U.S. territories. While the U.S. Immigration and Naturalization Service does maintain a database of information about naturalized citizens and legal permanent residents, federal law prohibits the release of such personal information without the written permission of the person that is the subject of the inquiry. See 5 U.S.C. 552(b)(6) and 552a; 28 C.F.R. Part 16. Even if a campaign organization were to obtain written permission from a donor to request

citizenship or immigration information, replies to such inquiries would likely consume too much time to be of practical use during a campaign.

18. 2 U.S.C. § 441f states: “No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.”

19. See, for example, testimony of Thomas R. Hampson, an experienced corporate investigator specializing in evaluating foreign companies. Thomas R. Hampson, 7/15/97 Hrg., p. 62. Hampson was asked by the Committee to examine companies related to Indonesia’s Lippo Group, including Hip Hing Holdings, a U.S. corporation. He testified that a reasonably thorough search over two weeks of a number of different public databases did not enable him to determine the gross or net income of Hip Hing Holdings in the year in which it made a contribution to the DNC. Thomas R. Hampson, 7/15/97 Hrg., pp. 82-84. He indicated that this information is not a matter of public record nor easily accessible, even to an expert investigator.

20. An illustration is provided by In re Kramer, FEC MUR 4398, an FEC civil enforcement action settled by conciliation agreement dated 8/22/96.

Thomas Kramer, a foreign national, contributed a total of \$322,600 in illegal campaign contributions during the 1994 election cycle to both parties at the state, local and national level. He made these contributions directly, through several Florida corporations he controlled, and through several individuals used as contribution conduits. His donations included \$205,000 to the Florida Republican Party and \$65,000 to the DNC. His lawyer was quoted in the press as saying that “no fundraiser had ever inquired into Kramer’s immigration status or refused his funds because he was a foreign national” and that Kramer first learned he might be violating the law from reading a newspaper article. Associated Press, 7/18/96.

Kramer voluntarily contacted the FEC, which ultimately fined him \$323,000. The press reported that some campaign organizations were resisting refunding his illegal contributions. The Florida Republican Party, for example, initially wrote to Kramer that his contributions “had been received in good faith and, therefore, were not available for refund,” though it later returned a portion of the funds. The Kramer case illustrates the widespread lack of awareness and understanding of the law, the ease with which illegal foreign contributions enter the campaign finance system, and an enforcement apparatus that took action in this matter only after being contacted by the wrongdoer.

21. S. 25, the McCain-Feingold bill, would make a number of the legislative remedies needed to clarify and strengthen section 441e.